LIBEL AND SLANDER — PUBLICATION — BY ONE PARTNER TO ANOTHER. — The defendant uttered to his business associate defamatory matter concerning the plaintiff. *Held*, that there was no publication upon which to found an action. *Kirschenbaum* v. *Kaufmann*, 50 N. Y. L. J. 406 (N. Y. City Ct.).

It is a broad rule of law that defamation communicated to any third person is, without more, a publication. *Snyder* v. *Andrews*, 6 Barb. (N. Y.) 43. And to this proposition there are few exceptions. Defamatory statements made between husband and wife about others, however, constitute one such exception. This is based on the common-law principle that husband and wife are one person. *Sesler* v. *Montgomery*, 78 Cal. 486, 21 Pac. 185; *Wennhak* v. *Morgan*, 20 Q. B. D. 635. A New York decision, moreover, which the principal case professes to follow, holds that the dictation of a business letter by the manager of a corporation to a stenographer in its employ, being in effect but one corporate act, is not a publication. *Owen* v. *Ogilvie Publishing Co.*, 32 N. Y. App. Div. 465; see a criticism of this case in 12 HARV. L. REV. 355. The court in the case last cited intimates that were no corporation involved there might be a publication. And such is the law. *Pullman* v. *Hill*, [1891] 1 Q. B. 524. See *Boxsius* v. *Goblet Frères*, [1894] 1 Q. B. 842, 846; *Gambrill* v. *Schooley*, 93 Md. 48, 61, 48 Atl. 730, 731. See 15 HARV. L. REV. 230. Regardless of the soundness of this distinction, it seems difficult to bring the principal case within it. Individual identity is not lost by entering into partnership. And business relationship would seem preferably a ground for according privilege rather than for denying the existence of a *primâ facie* case. *Lawless* v. *Anglo-Egyptian Cotton & Oil Co.*, L. R. 4 Q. B. 262; *Edmondson* v. *Birch & Co.*, [1907] 1 K. B. 371.

MASTER AND SERVANT — ASSUMPTION OF RISK — EFFECT OF WARNING THAT EMPLOYEES USING ELEVATOR DO SO AT THEIR OWN RISK. — Plaintiff's husband, employed by the defendant, was killed while riding on defendant's freight hoist, which bore a sign: "Dangerous. Keep off. Persons riding this hoist do so at their own risk." The jury were instructed that if they believed from the evidence that the warning was posted for the purpose of evading the master's duty to provide safe appliances, disregarding the warning would not constitute a defense. *Held* that the charge was correct. *Selden-Breck Const. Co. Linnett*, 134 Pac. 956 (Okl.).

A qualified permission, such as in the principal case, is generally held to cast all risk on the one who accepts it. *Burns* v. *Boston Elevated*, 183 Mass. 96, 66 N. E. 418. The court argues that that result does not follow here, because the master was trying to evade his duty to provide safe appliances. It is hard to see why the assumption of risk is not as clear in one case as in the other. Moreover, the evasion of the master's duty does not prevent the employee's assuming the risk when the master tells the servant to accept conditions as they are or leave the employment. *Lamson* v. *American Axe & Tool Co.*, 177 Mass. 144, 58 N. E. 585. But there has grown up in modern law a policy of dealing strictly with employers. In England, indeed, continuing in a business, even where certain dangers are known to exist, is not assumption of risk. *Smith* v. *Baker*, [1891] A. C. 325. In this country an employee is never held to have assumed a risk unless it be shown that he exactly comprehended its nature. *Miner* v. *Franklin County Telephone Co.*, 83 Vt. 311, 75 Atl. 653; *O'Toole* v. *Pruyn*, 201 Mass. 126, 87 N. E. 608, *sub nom. O'Toole* v. *N. E. Gas & Coke Co.* These results seem to show a recognition by the courts that the pressure of economic conditions may destroy an employee's freedom to select the conditions under which he shall work. On this basis the decision in the principal case can be supported.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — EXTRATERRITORIAL EFFECT. — An employee who was insured by his employer under the

Massachusetts Workmen's Compensation Act of 1911 was injured in the scope of his employment in New York and sought to recover from the Mutual Liability Insurance Co. *Held*, that the act contemplates no extraterritorial effect. *In re American Mutual Liability Insurance Co.*, 102 N. E. 693 (Mass.).

The principles involved are discussed in this issue, page 271.

NUISANCE — NATURE OF RIGHT TO MAINTAIN NUISANCE — EFFECT OF ACTION IN RELIANCE UPON PAROL LICENSE. — The plaintiff sued the defendant, an adjoining landowner, for maintaining a nuisance in the form of a pumping station. The defendant claimed an irrevocable license to maintain the nuisance because the plaintiff's grantor, in consideration of the payment of a consensual judgment awarding past and future damages for the nuisance, had discharged the defendant from all claims of this character which at any time might accrue to the owner of the property. *Held*, that the plaintiff can recover. *Panama Realty Co.* v. *City of New York*, 143 N. Y. Supp. 893 (N. Y. App. Div.).

This decision reverses the holding of the lower court to the effect that the defendant had acquired an irrevocable license to maintain the nuisance. The court below considered the right to enjoy land free from nuisance as in the nature of a servitude imposed on the adjoining land. It argued, therefore, that a license to maintain a nuisance, when acted upon, would extinguish this easement or right of the owner of the annoyed land to enjoy his land free from nuisance. For a criticism of the decision of the lower court, see 26 HARV. L. REV. 460. The upper court adopts the proper view that the right to maintain a nuisance to adjoining land is essentially an easement, and can arise, therefore, only by grant or prescription.

PATENTS — NATURE AND REQUISITES FOR PATENT — PREVIOUS ABANDONMENT AS A BAR. — An application was made for a process patent. The applicant had, more than two years before, obtained an apparatus patent, and his application had completely disclosed the process which was the subject of his present application. *Held*, that the process idea, having been abandoned, could not be patented. *Re Leonard's Application for a Patent*, 13 East. L. R. 280 (Canada).

In the United States, as well as in Canada, if an inventor in his application distinctly limits his claims for a patent to less than the full scope of the novel ideas disclosed, the unclaimed inventions are made public property. *Underwood* v. *Gerber*, 149 U. S. 224, 13 Sup. Ct. 854; *McClain* v. *Ostmayer*, 141 U. S. 419, 12 Sup. Ct. 76. It is commonly said that the unclaimed inventions are abandoned or dedicated to the public. *Stirrat* v. *Excelsior Mfg. Co.*, 61 Fed. 980. These terms, it is submitted, are fictitious, as they imply an intent on the part of the inventor which surely does not exist save in rare instances. The doctrine of abandonment really operates as a forfeiture, in certain circumstances, of the right of the inventor to secure a monopoly of his invention by patent. That this is the true significance of the doctrine is indicated by the reluctance of the courts to find abandonment and their insistence that the proof of it be convincing. *Mast* v. *Dempster Mill Mfg. Co.*, 82 Fed. 327, 27 C. C. A. 191; *Ide* v. *Trorlicht, Duncker, & Renard Carpet Co.*, 115 Fed. 137, 53 C. C. A. 341. The courts, nevertheless, treat this fictitious intention as a question of fact and, in accordance with that view, consider that the *primâ facie* appearance of abandonment by unclaimed disclosure in the application may be rebutted by the filing of a separate application for patent on the unclaimed idea. *Victor Talking Machine Co.* v. *American Graphophone Co.*, 145 Fed. 350, 76 C. C. A. 180; *Suffolk* v. *Hayden*, 3 Wall. (U. S.) 315. The result of the principal case would be reached in the United States, not only because of the abandonment, but also on account of the provision in the United States statute that an invention which has been in public